IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No.

JACK BARG,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS, AND SUPPORTING BRIEF.

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SUBJECT INDEX.

	PAGE
PETITION FOR WRIT OF CERTIORARI	1-13
A. Summary and short statement of the matter involved	2-5
B. Statement of the basis upon which it is contended that this Court has jurisdiction to reverse the judgment of the Supreme Court of Illinois	5-9
C. The questions presented	9-11
D. Reasons relied on for the allowance of the writ	12-13
BRIEF IN SUPPORT OF PETITION	15-24
I. Report of Opinion	15
II. Statement of grounds on which jurisdiction of this Court is invoked	15-16
III. Statement of case	16
IV. Specification of assigned errors intended to be argued	16-17
V. Argument	18-24
CONCLUSION	24

TABLE OF CASES.

Adams v. New York, 192 U. S. 585	20
Amos v. United States, 255 U. S. 313, 65 L. Ed. 655	6, 20
Byres v. United States, 273 U. S. 28, 71 L. Ed. 520	6
Boyd v. United States, 116 U. S. 616, 29 L. Ed. 746	6
Cohens v. Virginia, 6 Wheat. 264, 379	8
Dower v. Richards, 151 U. S. 658	8
Erie R. R. Company v. Purdy, 185 U. S. 148	8
Fisher v. Burks, 285 Ill. 290	23
Gouled v. United States, 255 U. S. 298	6, 20

PAGE

TABLE OF CASES (Continued).

Macon Grocery Co. v. Atlantic Coast Line R. R. Company, 215 U. S. 501, 506 8
Makey v. Dillon, 4 How. 447 8
Missouri v. Gehner, 281 U. S. 313, 320 7
Missouri, Kansas and Texas R. R. Company v. Haber, 169 U. S. 639 8
Osborn v. Bank United States, 9 Wheat. 738, 822 8
Patton v. Brady, 184 U. S. 608, 611 8
People v. Jack Barg, 384 Ill. 172, 51 N. E. (2d) 168 15
People v. Brewer, 355 Ill. 348, 359 18
People v. Dalpe, 371 Ill. 607, 611, 612 ..... 6, 19, 20
People v. DeLuca, 343 Ill. 269, 271 21
People v. DeYoung, 298 Ill. 380 ..... 23, 24
People v. Duchant, 370 Ill. 650 6
People v. Ford, 356 Ill. 572 ..... 6, 19
People v. Henneman, 373 Ill. 603, 606 ..... 6, 19, 21
People v. McGurn, 341 Ill. 632 ..... 6, 19
People v. Macklin, 353 Ill. 64 6
People v. Scanlan, 294 Ill. 64 24
Prentice v. Crane, 240 Ill. 250 23
Sanders v. Shaw, 244 U. S. 317, 320 7
Schlemmer v. Buffalo, Rochester & Pittsburgh Railway Company, 205 U. S. 1 7
Weeks v. United States, 232 U. S. 383 ..... 6, 20
Wilson v. Fisher, 369 Ill. 538, 541 23

STATUTES, CONSTITUTIONS AND TEXTBOOKS.

Title—28 U. S. C., Section 237 (b) 5, 15
Section 240 (a) 5, 15

Fourteenth Amendment to the Constitution of the United States, Section 1 ..... 7-13, 16-19, 22-24

Illinois Constitution—
Sec. 2, Art. 2 ..... 6, 18
Sec. 6, Art. 2 18
Sec. 10, Art. 2 18

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable, the Supreme Court of the United States:

Your petitioner, Jack Barg, respectfully prays that a Writ of Certiorari issue to review a final judgment of the Supreme Court of Illinois, being the highest court of the state in which a decision could be had, entered in a criminal prosecution there entitled "*People of the State of Illinois* v. *Jack Barg*" (R. p. 23), reversing the judgment of the Criminal Court of Cook County, Illinois, in favor of the People of the State of Illinois (hereafter called the respondent) and remanding the case to the Criminal Court of Cook County (the trial court) with directions to enter a proper judgment in each case (R. p. 29). The petitioner is aggrieved by the final judgment of the said Supreme Court of Illinois.

A.

Summary and Short Statement of Matter Involved.

The petitioner, Jack Barg, a native born citizen of the United States, a resident of the City of Chicago and State of Illinois, on July 29, 1942, resided in 1236 South Albany Avenue, Chicago; that about 8:30 p.m. on the same day the petitioner and one Jack Levin, whom the petitioner had known about three weeks and to whom petitioner had on previous occasions loaned his automobile for a short period of time, were drinking in a tavern about a mile from his residence and in the neighborhood in which the petitioner resided (R. pp. 6, 18, 19).

Levin borrowed the petitioner's automobile and obtained the keys from the petitioner while both were in the tavern and promised that he would return in a short time. He did not return to the tavern until 2:45 a.m., July 30, 1942. The petitioner had remained in the tavern continuously during the absence of Levin and until Levin returned with petitioner's automobile. The owner of the tavern observing that the petitioner was under the influence of liquor requested Levin to drive the automobile and take the petitioner home (R. p. 19). Levin complied with the request of the owner of the tavern, Joseph Katz, and the petitioner and Levin entered the automobile between 3:00 a.m. and 4:00 a.m. when they left the tavern of Joseph Katz, located at 3044 Madison Street, Chicago. Levin was driving the automobile, the petitioner while sitting on the right side of Levin in the front seat had fallen asleep (R. pp. 6, 19).

Certain police officers, cruising with a squad in the neighborhood of Devon and Broadway overheard a call on the radio about 4:00 a.m. from which call they learned that some men had been tampering with an automobile in the vicinity of 62nd and North Hamilton (R. pp. 8, 13).

They did not receive a description of any particular car involved in the transaction, no description of the men nor any information as to how many men were involved. The police noticed the car which was being driven by Levin and were only attracted by the fact that no lights were burning on the automobile which they noticed was being driven south on Hamilton Avenue near Marshfield (R. p. 8).

The officers did not signal the driver of the car to stop and did not sound any siren to indicate they were police officers, but began a chase of the car being driven by Levin; the chase was for a distance of about two blocks when one of the officers fired several shots. Levin stopped the car immediately and ran away. The petitioner was awakened by the shots made by the officers and when the officers opened the door on the right side of the car, petitioner either alighted from the car or fell out on the ground (R. pp. 6, 7, 13, 15, 19).

The officers without any warrant searched the person of the petitioner, without his consent and obtained from the person of the petitioner a bunch of keys. They took the keys and unlocked the automobile trunk which was on the rear of the car and upon searching the trunk they found some automobile tires. After the search, made without a warrant the petitioner was arrested (R. pp. 6, 8).

Indictments were later predicated upon the automobile tires and other property which had been taken by the police officers as the result of the unlawful search of the automobile trunk attached to the automobile of the petitioner. None of the alleged contraband goods were visible until after the petitioner's keys had been taken from his pocket, his automobile trunk unlocked and a search of the trunk made by the officers without any warrant or other process. The officers had no knowledge that any automobile tires, golf balls or any other property had been taken

from the automobile alleged to have been tampered with in the vicinity of Hamilton Avenue and had no suspicion that Levin or the petitioner had been implicated in that particular crime or any other crime.

The indictments were consolidated for trial, before the court without a jury (R. p. 4).

Motion To Suppress.

In apt time and before trial had begun the petitioner filed a petition to suppress as evidence the automobile tires and other property obtained as a result of the illegal search and seizure, and upon which the indictments were predicated (R. pp. 5, 6). The petition recited the circumstances showing the illegality of the search of his person and automobile trunk and his arrest following the search; it alleged that the State's Attorney intended to introduce in evidence against the petitioner the property illegally seized and taken from his automobile trunk, further alleging that such procedure would violate his constitutional rights and deny to him the due process of law; the petition further alleged that the crimes of larceny, receiving stolen property and other offenses alleged in the indictments were solely based upon the property taken from petitioner's automobile trunk after the illegal search and seizure. It prayed that the tires and all other articles taken from the automobile trunk of the petitioner be suppressed as evidence.

Hearing On Motion To Suppress.

On the hearing of the motion to suppress, the petitioner testified to the facts above stated and in addition thereto that he had no knowledge that the automobile tires and other property taken by the police officers from the automobile trunk had been placed in his automobile trunk, and that he did not place them there (R. p. 7). The only other witness who testified on this hearing was Police Officer

Rosensweig who corroborated the facts above stated (R. pp. 7, 8, 9) and in addition thereto testified that "the car was not speeding and they were not violating any law", "We had to unlock the trunk, and got the keys from the defendant when we searched him", "When we searched the car we found some tires in the trunk", "We had no warrant for his arrest at the time we arrested him", "*We stopped the car on suspicion*", "The stopping of the car and the search of the defendant and the car was on suspicion that he might be involved in something" (R. p. 8).

The court denied the motion to suppress (R. p. 11).

The trial was had, petitioner was found guilty of the larceny of a motor vehicle tire and sentenced on each indictment to a term of ten years in the penitentiary, the sentences to run concurrently (R. p. 21).

B.

Statement of the Basis Upon Which It Is Contended that this Court Has Jurisdiction to Reverse the Judgment of the Supreme Court of Illinois.

The jurisdiction of this court to grant this petition for a writ of certiorari is invoked by Sections 237 (b) and 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C.A. 344, 350).

The judgment of the Supreme Court of Illinois sought to be reversed by your petitioner, is a judgment of the highest court of the State of Illinois (R. p. 30), and was rendered September 21, 1943. A petition for rehearing was duly filed October 16, 1943, (R. pp. 30-48), and the court having considered the petition for rehearing did, on November 11, 1943, overrule and deny said petition (R. p. 49), making said judgment of the Supreme Court a final judgment. An order was entered by Mr. Justice Murphy of this Honorable Court, February 1, 1944, extending the

time for the filing of the petition for certiorari to and including March 11, 1944. (R. p. 50).

The Supreme Court of Illinois in holding that a search on bare suspicion of the automobile trunk attached to an automobile belonging to the petitioner, without warrant or other process, and without the consent of the petitioner after the police had, on bare suspicion without warrant or consent, searched the person of the petitioner and took from the person of the petitioner his keys; and that the subsequent finding in the automobile trunk of contraband goods which were not visible until the trunk had been unlocked by said officers with the keys of the defendant, and the denial by the trial court of the motion and petition of the petitioner to suppress the evidence although timely made, and the subsequent introduction in evidence on the trial of a case of the automobile tires and other articles resulting from such search and seizure, over the objection of the defendant, was not a denial of due process of law and a denial of the equal protection of the laws as guaranteed by the Constitutions of Illinois and of the United States, conflicts with the prior decisions of the Illinois Supreme Court, *People* v. *Henneman*, 373 Ill. 603, 606; *People* v. *Dalpe*, 371 Ill. 607, 611, 612; *People* v. *Duchant*, 370 Ill. 650; *People* v. *Ford*, 356 Ill. 572; *People* v. *Macklin*, 353 Ill. 64, and *People* v. *McGurn*, 341 Ill. 632, and conflicts with applicable decisions of this Honorable Court, *Byres* v. *U. S.*, 273 U. S. 28, 71 L. Ed. 520; *Gouled* v. *U. S.*, 255 U. S. 298, 65 L. Ed. 647; *Boyd* v. *U. S.*, 116 U. S. 616, 29 L. Ed. 746; *Weeks* v. *U. S.*, 232 U. S. 383, 58 L. Ed. 652; *Amos* v. *U. S.*, 255 U. S. 313, 65 L. Ed. 655, and such holding by the Supreme Court of Illinois deprives your petitioner of his liberty without due process of law and denies to him the equal protection of the laws.

The denial of due process of law as guaranteed by Article II, Section 2 of the Illinois Constitution, which sec-

tion of the Constitution is the same as the due process of law clause of the United States Constitution, was raised in the trial court on the motion and petition to suppress, and the petitioner under the applicable decisions of the Supreme Court of Illinois had a right to rely upon his belief that the Supreme Court of Illinois would adhere to its former decisions which hold that a search and arrest of a citizen on bare suspicion deprives the citizen of his constitutional rights, and that it was error for a trial court to deny a motion and petition to suppress, when timely made. The Supreme Court of Illinois in failing to follow the applicable decisions of Illinois and of this Honorable Court, as above cited, was an act done unexpectedly at the end of the proceeding, when the petitioner no longer had any right to do other than file his petition for rehearing, within the time allowed by the laws of Illinois, and claim that the decision of the Supreme Court of Illinois violated his constitutional rights as an American citizen under the due process of law clause of the Fourteenth Amendment of the Federal Constitution, and was a denial of the equal protection of the laws as guaranteed by the said Fourteenth Amendment of the Federal Constitution (Section 1, Fourteenth Amendment, Federal Constitution). He claims that his rights, privileges, and immunities as an American citizen under the Federal Constitution had been violated by the action of the Supreme Court of Illinois. This was the first opportunity of the petitioner to raise the federal question and the question was timely made, *Sanders* v. *Shaw*, 244 U. S. 317, 320; *Missouri* v. *Gehner*, 281 U. S. 313, 320; *Schlemmer* v. *Buffalo, Rochester, and Pittsburgh Railway Co.*, 205 U. S. 1.

Where in this court a party asserts that the final judgment of the highest court of a state denied him a right or immunity set up and claimed under the Constitution or laws of the United States and this court finds that a federal question involving such claim was properly raised in

the court below, jurisdiction of this court can not be defeated by the mere failure or refusal of the highest court of the state to refer to the question so raised, *Erie R. R. Company* v. *Purdy*, 185 U. S. 148, and a denial of the petition for rehearing in which the petitioner claimed that the decision of the Supreme Court of Illinois denied him certain rights, privileges, and immunities guaranteed by the Fourteenth Amendment of the Federal Constitution, this court has jurisdiction to consider the case on petition for certiorari (R. pp. 44-48).

The petitioner claimed a right under the Fourteenth Amendment of the Federal Constitution in his petition for rehearing, *i. e.*, the right from arrest of his person, and search and seizure of his property on bare suspicion. A construction of the Constitution sustaining the opposite view claimed by the petitioner raised a federal question. *Cohens* v. *Virginia*, 6 Wheat 264, 379; *Osborn* v. *Bank of United States*, 9 Wheat 738, 822; *Patton* v. *Brady*, 184 U.S. 608, 611; *Macon Grocery Company* v. *Atlantic Coast Line R.R. Company*, 215 U.S. 501, 506.

While it is conceded that this court can not enter upon an inquiry as to whether the finding of a state court is against the evidence, *Missouri, Kansas, and Texas R.R. Company* v. *Haber*, 169 U.S. 639, nevertheless, the question as to the sufficiency, competency, or legal effect of the evidence has bearing upon a question of Federal law raised in the proceedings in the state court to support the conclusion reached by the state court may be reviewed by this court, as a supreme court of error of a State may review the proceedings of inferior courts of original jurisdiction. *Makey* v. *Dillon*, 4 How. 447; *Dower* v. *Richards*, 151 U.S. 658. The evidence of the police officer who made the unlawful search of the automobile trunk of the petitioner and after finding contraband goods immediately made the arrest of the petitioner without warrant or without probable cause, clearly shows that the search and

seizure of the goods from the petitioner's automobile trunk and the subsequent arrest of the petitioner was made on *bare suspicion* (R. p. 8). This testimony being uncontradicted shows that the petitioner's constitutional rights as guaranteed by the Fourteenth Amendment of the Federal Constitution were ruthlessly violated and the total absence of probable cause may be considered by this court on certiorari.

The conflict in the decision of the Supreme Court of Illinois in the case at bar with its previous decisions and the decisions of this Honorable Court will seriously affect the uniformity and the administration of settled rules of construction in other cases relative to the constitutional rights of an American citizen under the Fourteenth Amendment of the Federal Constitution.

This Honorable Court should exercise its jurisdiction in this case not merely to determine whether there was an improper application of controlling leading principles, but for the purpose of pronouncing the legal principles which should be applied when a citizen of the United States has been deprived of his liberty and property by an illegal search made on bare suspicion, and an illegal arrest made on bare suspicion as is shown by the undisputed evidence of the arresting police officer in the case at bar (Abs. 8).

C.

The Questions Presented.

1. Whether the federal constitutional rights of due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Federal Constitution are violated where it appears that police officers, without a warrant, without probable cause, and without the consent of a citizen of the United States, stops an automobile belonging to the citizen which was being

driven by another person, on bare suspicion makes a search of the automobile after having searched the person of the citizen, taking from the person of the citizen his keys, unlocking an automobile trunk attached to the citizen's automobile, searching said trunk without warrant and without consent, finding in said trunk goods which later turned out to be contraband goods, arresting the citizen without warrant and on bare suspicion, using the said alleged contraband goods as the basis of a criminal prosecution against the citizen from whose possession the same were taken, a denial of a timely motion to suppress the evidence in the trial court and an affirmance of such denial is made in the Supreme Court of the State and evidence secured by the unlawful search is used in evidence on the trial of the case.

2. Whether a citizen of the United States whose constitutional rights have been violated, as related in Paragraph One, who relies upon the long unbroken line of decisions of the state court and the applicable decisions of the Supreme Court of the United States which have held that an arrest on bare suspicion is illegal and that if contraband goods are found as a result of an illegal search and seizure, that the due process of law clauses of the State and Federal Constitution having been violated a timely motion to suppress should be sustained, has a right to apply to this court for a protection of his federal constitutional rights after he has claimed the benefit of the Fourteenth Amendment in the highest court of the State.

3. Where the uncontradicted evidence of the arresting officer (R. p. 8) given on a hearing upon a petition and motion to suppress evidence illegally seized after an illegal search of the automobile of a citizen, as related above in Paragraph One herein, shows that the citizen was not driving or operating the automobile; that the automobile in which the citizen was riding was not speeding; that the

citizen was not violating any law; that the person of the citizen was searched and keys belonging to the citizen were taken without warrant and without consent of the citizen; that it was necessary to unlock the automobile trunk, search the same before any alleged contraband goods were found in said trunk; that the automobile was stopped on suspicion and that the automobile and the citizen was searched on bare suspicion, is the searching of the automobile and arrest of the citizen on bare suspicion a violation of his constitutional rights and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States, providing that no state shall deprive any person of his life, liberty or property without due process of law, and that all persons shall be accorded the equal protection of the laws.

4. Where a defendant whose arrest has been made under the circumstances related above in Paragraph One, the trunk of the automobile searched as above related and the applicable decisions of the highest court of a state having held that such search and seizure without warrant and without consent and such arrest, both on bare suspicion, was illegal and when called upon to pass upon the same question the highest court of a state holds to the contrary, and the defendant having raised the question in the trial court and in the highest court of a state that his constitutional rights of due process of law had been violated; and after a surprisingly adverse decision conflicting with all previous decisions of the highest court of a state; and the defendant on petition for rehearing claims rights and immunities under the Fourteenth Amendment of the Constitution and the due process of law clauses thereunder, is the raising of such Federal Constitutional question in apt time, and is the citizen entitled to relief from this court?

D.

Reasons Relied on for the Allowance of the Writ.

The decision of the Supreme Court of Illinois holding that the search of the automobile on bare suspicion without warrant and without the consent of the owner and the arrest of the owner on bare suspicion after having found alleged contraband goods as a result of the illegal search did not violate the constitutional rights of the defendant and that the motion to suppress aptly made, was properly denied, conflicts with the prior decisions of the Supreme Court of Illinois and with the well settled decisions of this Honorable Court. There should be uniformity in the rule of law adhered to by this Honorable Court, that such search and arrest on bare suspicion as the uncontradicted evidence in the case at bar shows, violates the constitutional rights of a citizen of the United States as guaranteed by the Fourteenth Amendment of the Federal Constitution and denies to him the due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Federal Constitution.

Vicarious construction of the Fourteenth Amendment of the Federal Constitution should not be permitted to create unnecessary risks or uncertainties in relation to the rights guaranteed by the Fourteenth Amendment. The facts are undisputed relative to the illegal search of the automobile of the petitioner and his illegal arrest (R. p. 8). The arresting officer specifically states that he had no warrant for the arrest of the petitioner or the search of his automobile; that it was only on bare suspicion that the search and arrest was made; that the defendant nor the driver of the automobile were violating any law at the time of the search or arrest and were not suspected of having committed any particular crime.

The problem presented is a matter of the construction of the rights of American citizens under the Fourteenth Amendment of the Federal Constitution while in the jurisdiction of the United States. Such rights should be uniform and this Honorable Court should lay down the doctrine so as to bring about uniformity as to the rights of all American citizens under the Fourteenth Amendment of the Federal Constitution. The matter is of vital importance to all citizens whose federal constitutional rights have been violated by illegal search and seizure of their property and illegal arrest of their persons by police officers acting under color and authority of state laws. A pronouncement by this Honorable Court will clarify the situation so that the rights of all citizens throughout the jurisdiction of the United States under the Fourteenth Amendment will be uniform, both in the state and federal courts. The unbroken line of decisions upholding the right of citizens to be free from arrest on bare suspicion, both in the state courts and in the federal courts can only be preserved by a decision of this Honorable Court. Such an important question should be reviewed by this court on certiorari.

Respectfully submitted,

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Petitioner.

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